

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JUDY O.,

Plaintiff,

-v-

5:21-CV-749

COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

APPEARANCES:

OLINSKY LAW GROUP
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Syracuse, NY 13202

SOCIAL SECURITY
ADMINISTRATION
Attorneys for Defendant
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15 New Sudbury Street
Boston, MA 02203

DAVID N. HURD
United States District Judge

OF COUNSEL:

HOWARD D. OLINSKY, ESQ.
JULIE ATKINS, ESQ.

JESSICA RICHARDS, ESQ.
Special Ass't U.S. Attorney

ORDER ON REPORT & RECOMMENDATION

On July 1, 2021, plaintiff Judy O.¹ (“plaintiff” or “claimant”) filed this action seeking review of the final decision of defendant Commissioner of Social Security (“Commissioner” or “defendant”) denying her application for Disability Insurance Benefits (“DIB”) under the Social Security Act (the “Act”). Dkt. No. 1.

After the Commissioner filed a certified copy of the Administrative Record, Dkt. No. 7, both parties briefed the matter in accordance with General Order 18, which provides that an appeal taken from the Commissioner’s final decision denying benefits will be treated as if the parties have filed cross-motions for a judgment on the pleadings, Dkt. Nos. 11, 14.

On July 13, 2022, U.S. Magistrate Judge David E. Peebles advised by Report & Recommendation (“R&R”) that the Commissioner’s decision be affirmed and that plaintiff’s complaint be dismissed. Dkt. No. 20. As Judge Peebles explained, the Administrative Law Judge (“ALJ”) assigned to hear plaintiff’s case had applied the correct legal standards to, and relied on substantial evidence in discounting, a medical opinion from Dr. Lori Anderson, claimant’s primary care physician. *Id.*

¹ In accordance with a May 1, 2018 memorandum issued by the Judicial Conference’s Committee on Court Administration and Case Management and adopted as local practice in this District, only claimant’s first name and last initial will be mentioned in this opinion.

Plaintiff has filed objections. Dkt. No. 21. In her objections, plaintiff argues the ALJ failed to apply the current set of governing Regulations for the evaluation of medical evidence—specifically, the requirement that an ALJ evaluate supportability and the consistency. According to plaintiff, Judge Peebles recognized as much by noting that the “ALJ’s consistency discussion was less than optimal.” *Id.*

The Commissioner has filed a response in opposition to plaintiff’s objections. Dkt. No. 22. There, defendant argues Judge Peebles correctly evaluated the ALJ’s written decision. According to defendant, plaintiff’s objection is simply a restatement of the initial argument made in her opening brief; *i.e.*, that the ALJ failed to comply with the Regulations. *Id.*

Upon *de novo* review, the R&R will be accepted and adopted in all respects. *See* 28 U.S.C. § 636(b)(1)(C).

Therefore, it is

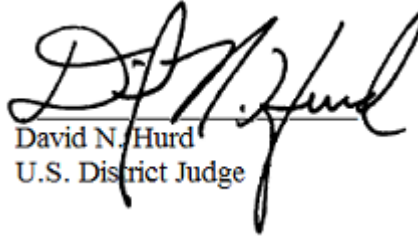
ORDERED that

1. The Report & Recommendation is ACCEPTED;
2. The Commissioner’s motion for a judgment on the pleadings is GRANTED;
3. Plaintiff’s motion for a judgment on the pleadings is DENIED;
4. The Commissioner’s decision is AFFIRMED; and
5. Plaintiff’s complaint is DISMISSED.

The Clerk of the Court is directed to enter a judgment accordingly and close the file.

IT IS SO ORDERED.

Dated: July 28, 2022
Utica, New York.



David N. Hurd
U.S. District Judge